REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-890** For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended
- versus -	
RDC MINIMART INC., RAMIL C. DELA CRUZ and **LOLITA I. DELA CRUZ,** (Shop 1 G/F Net Square Bldg., 2 Fort Bonifacio, Taguig City and/or 151 Batangas West, Ayala Alabang Village, Muntinlupa City), *Accused.*	Members: **RINGPIS-LIBAN,** *PJ Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* Promulgated: 9:05 am

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DECISION

The Case

Before the Court is the *Information* filed on June 30, 2021, indicting RDC Minimart Inc. ("RDC"; "accused RDC"), Ramil C. Dela Cruz ("accused Ramil"), and Lolita I. Dela Cruz ("accused Lolita") for violation of *Section 255*, in relation to *Sections 253(d) and 256 of the National Internal Revenue Code of 1997 ("NIRC"), as amended*, to wit:[1]

> That on or about July 28, 2017 and thereafter, in Muntinlupa City, Philippines, and within the jurisdiction of this Honorable Court, accused RDC Minimart, Inc., a domestic corporation and a registered taxpayer of the Revenue District Office No. 53-B, Muntinlupa City, with Tax Identification No. 007-761-348-000, required by law to file income tax returns pay the tax due thereon, and accused Ramil C. Dela Cruz and Lolita I. Dela Cruz, chairman of the board and treasurer, respectively, did then and there, willfully, unlawfully and intentionally fail and refuse to pay deficiency income tax in the amount of Php1,794,605.28 (excluding interest and penalties thereon), for taxable year 2013, despite due assessment, notice

[1] Docket – Vol. I, pp. 5 to 7.

and demand, the latest of which was the Final Notice Before Seizure dated July 28, 2017, which payment is required by the pertinent provisions of the National Internal Revenue Code of 1997, thereby depriving the government of the needed revenues to sustain public service, to its damage and prejudice.

CONTRARY TO LAW.

The Facts

Accused RDC Minimart Inc. is a domestic corporation duly organized and existing under and by virtue of Philippine laws with Securities and Exchange Commission Registration No. CS201007165, while accused Ramil C. Dela Cruz and Lolita I. Dela Cruz are RDC's President/Chairman of the Board and Treasurer, respectively, based on RDC's General Information Sheet for the year 2015.[2]

On December 4, 2015, the Bureau of Internal Revenue ("BIR") issued to RDC a Letter of Authority ("LOA") No. SN: eLA201200035463[3] authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes from January 1, 2013 to December 31, 2013. The same was signed received by Ram Cudia on December 9, 2015.

On November 18, 2016, complainant BIR then issued a Preliminary Assessment Notice ("PAN")[4] assessing RDC for deficiency income tax, value-added tax ("VAT"), and expanded withholding tax ("EWT") for the taxable year ("TY") 2013, which was signed received by Melchor Jallorina ("Jallorina") on November 29, 2016.

On December 20, 2016, complainant BIR then issued a Formal Assessment Notice ("FAN"),[5] with attached Assessment Notices, reiterating the assessments in the PAN and was signed received also by Jallorina on December 22, 2016.

A Preliminary Collection Letter ("PCL") was later issued by the complainant BIR on July 10, 2017 requesting RDC to pay the assessments per FAN.[6] This was followed by a Final Notice Before Seizure ("FNBS") issued on July 28, 2017.[7]

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2 Exhibits "P-14", "P-14-1", and "P-14-2", *id.* at 395 and 399.
3 Exhibit "P-1", *id.* at 358.
4 Exhibit "P-5", *id.* at 362 to 366.
5 Exhibit "P-6" to "P-7", *id.* at 367 to 372.
6 Exhibit "P-8", *id.* at 374.
7 Exhibit "P-9", *id.* at 376.

On November 20, 2017, complainant BIR then issued a Warrant of Distraint and/or Levy ("WDL")[8] against RDC, which was signed received by Ramie S. Cudia on December 12, 2017.

In a Letter dated December 21, 2017,[9] accused RDC requested from the complainant BIR a copy of the FAN and its proof of service, which was replied to by the complainant BIR on a Letter dated December 29, 2017.[10]

On January 20, 2018, accused RDC filed a Request Letter for Reinvestigation,[11] explaining that it did not receive the PAN and FAN and that it filed a protest letter thereon.

On March 15, 2018, RDC filed a Compliance with Manifestation,[12] attaching a copy of the Protest Letter dated January 20, 2017 and stamped received by BIR-RR8 DIR's OFFICE on February 8, 2017.[13]

On June 27, 2019, the Commissioner of Internal Revenue ("CIR"), on the basis of the Joint Complaint-Affidavit filed by ROs Angelica P. Agcaoili, Mohammad Ali M. Rodi and Janette F. Torres on even date, then recommended the criminal prosecution of RDC and its responsible corporate officers, accused Ramil and Lolita, for violation of *Section 255, in relation to Section 253 and 256, of the NIRC, as amended*.[14]

Thus, on June 30, 2021, the prosecution filed the *Information* before the Court.

On July 9, 2021, finding existence of probable cause, the Court resolved to issue a warrant of arrest against the accused Ramil and Lolita.[15]

Meanwhile, on March 24, 2022, RDC filed a Letter dated March 23, 2022[16] offering a Compromise Settlement of the FAN and pay 40% of the deficiency income tax assessment.

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8 Exhibit "P-10", *id.* at 377.
9 Exhibit "A-6", Docket – Vol. II, p. 767.
10 Exhibit "A-7", *id.* at 768.
11 Exhibit "A-9", *id.* at 770 to 776.
12 Exhibit "A-10", *id.* at 777 to 778.
13 Exhibit "A-11", *id.* at 779 to 784.
14 Exhibit "P-11" and "P-12", Docket – Vol. I, pp. 379 to 385.
15 *Id.* at 47 to 51.
16 Exhibit "A-19", Docket – Vol. II, p. 838 to 840.

In view of the voluntary surrender of accused Ramil and his submission to this Court's jurisdiction on May 27, 2022, his cash bail bond in the amount of ₱60,000.00 was approved, thereby lifting the warrant of arrest issued against him, declaring the same without further force and effect.[17]

On July 14, 2022, accused Ramil and Lolita filed an Omnibus Motion to: a) Quash the Information/s, and b) Motion to Reset,[18] to which plaintiff filed its Comment on September 1, 2022.[19] However, the Motion to Quash the Information was denied in a Resolution dated September 21, 2022.[20]

Meanwhile, the Court resolved to archive the case against accused Lolita for failure to serve the warrant of arrest against her, without prejudice to its revival upon her arrest.[21]

Accused Ramil's arraignment was held on February 1, 2023, where he pleaded **NOT GUILTY** to the offenses charged against him.[22] Prior thereto, the Pre-Trial Brief for the Plaintiff and Pre-Trial Brief (for Accused) were both filed on January 31, 2023.[23]

Verily, in view of the voluntary surrender of accused Lolita and her submission to this Court's jurisdiction on March 1, 2023, her cash bail bond in the amount of ₱60,000.00 was approved, thereby lifting the warrant of arrest issued against him, declaring the same without further force and effect[24] and the criminal case against her was thereby revived.

Accused Lolita was then arraigned on March 8, 2023, where she pleaded **NOT GUILTY** to the offenses charged against her.[25] On even date, the Pre-Trial Conference for all accused was held.[26]

Trial ensued with the prosecution presenting its witnesses: 1) Janette F. Torres ("RO Torres"),[27] BIR Revenue Officer assigned at the Assessment Section of Revenue District Office ("RDO") No. 44, Taguig City-Pateros of RR No. 8B, South NCR, and 2) Angelica P. Agcaoili ("RO Agcaoili"),[28] BIR

[17] Resolution dated May 31, 2022, Docket – Vol. I, pp. 77 to 78.
[18] *Id.* at 90 to 104.
[19] *Id.* at 125 to 128.
[20] *Id.* at 135 to 137.
[21] Resolution dated October 26, 2022, *id.* at 139 to 140.
[22] *Id.* at 212 to 215.
[23] *Id.* at 141 to 149 and 207 to 209.
[24] Resolution dated March 1, 2023, *id.* at 221 to 222.
[25] *Id.* at 233 to 234.
[26] *Id.* at 232 and 235 to 236.
[27] Exhibit "P-13", *id.* at 274 to 288; Minutes of Hearing held on, and Order dated May 24, 2023, *id.* at 342 and Docket – Vol. II, pp. 692 to 693.
[28] Exhibit "P-14", *id.* at 253 to 266; Minutes of Hearing held on, and Order dated May 24, 2023,, *id.* at 342 and Docket – Vol. II, pp. 692 to 693.

Revenue Officer assigned at the Compliance Section of RDO No. 48 – West Makati, of RR No. 8A, Makati City.

The prosecution filed its Formal Offer of Evidence on June 7, 2023,[29] with accused's Comment/Opposition filed on July 11, 2023.[30] On August 7, 2023, the Court resolved to admit all of the prosecution's exhibits.[31]

Accused Ramil presented himself as witness by way of his counter-affidavit and Rejoinder filed before the Department of Justice ("DOJ"),[32] while accused Lolita presented herself as witness by way of her Judicial Affidavit.[33] In addition, accused presented: 1) Melchor Jarollina, an ordinary crew of RDC,[34] and 2) Annaliza Manalo Acosta, RDC's bookkeeper from November 2010 to January 2018.[35]

Accused filed their Formal Offer of Exhibits on April 23, 2025,[36] without plaintiff's comment.[37] On February 3, 2025, the Court resolved to admit all of accused's exhibits, except Exhibits "A-5", "A-8", and "A-31".[38]

On September 18, 2025, accused filed their Memorandum mainly arguing that it did not receive the FAN, hence cannot be made liable to pay the deficiency income tax assessed therein.[39]

On the other hand, plaintiff failed to file its Memorandum.[40] Thus, the case was submitted for decision, with the promulgation of judgment set on January 15, 2026.[41]

The Issues

The parties stipulated on the following issues:[42]

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[29] Docket – Vol. I, pp. 350 to 357.
[30] *Id.* at 450 to 454.
[31] Docket – Vol. II, pp. 469 to 470.
[32] Exhibits "A-1" and "A-14", *id.* at 752 to 760 and 827 to 829; Minutes of Hearing held on and Order dated October 19, 2023, *id.* at 472 to 473.
[33] Exhibit "A-32", *id.* at 582 to 592; Minutes of Hearing held on and Orders dated February 22, 2024 and August 6, 2024, *id.* at 689 to 690 and 699 to 701.
[34] *Id.* at 576 to 579 and Exhibit "A-12", *id.* at 785; Minutes of Hearing held on, and Order dated August 6, 2024, *id.* at 699 to 701.
[35] *Id.* at 710 to 715; Minutes of Hearing held on, and Order dated April 3, 2025, *id.* at 737 to 739-A.
[36] *Id.* at 741 to 751.
[37] Judicial Records Verification dated May 28, 2025, *id.* at 861.
[38] *Id.* at 864 to 866.
[39] *Id.* at 868 to 883.
[40] Judicial Records Verification dated October 3, 2025, *id.* at 885.
[41] Resolution dated December 22, 2025, *id.*
[42] Order dated March 8, 2023, Docket – Vol. I, p. 235.

1. Whether or not accused are guilty of the crime charged in the information.

2. Whether or not accused should be civilly liable for deficiency income tax in the amount of ₱1,794,605.28.

The Ruling of the Court

Based on the *Information*, accused are being prosecuted for willful failure to deficiency income tax under *Section 255 of the NIRC, as amended*, to wit:

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who *willfully fails to pay such tax*, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
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> (Italics, Ours.)

The government's right to prosecute the alleged violation was made within the prescriptive period.

Before delving into the determination of whether the prosecution established all the elements of the accused's alleged violation of *Section 255 of the NIRC, as amended*, the Court shall first determine whether the violation is already barred by prescription.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[43]

Further, *Section 281 of the NIRC, as amended*, serves as Our guide in determining the prescription of the offense charged herein, thus:

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[43] *Jadewell Parking Systems Corp. v. Lidua, Sr.*, G.R. No. 169588, 07 October 2013, citing *Romualdez v. Hon. Marcelo*, G.R. Nos. 165510-33 (Resolution), April 13, 2011.

> SEC. 281. Prescription for Violations of any Provision of this Code. - *All violations of any provision of this Code shall prescribe after five (5) years.*
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> *Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof* and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.
> (Italics, Ours.)

Verily, as for the first consideration, it is thus clear that all violations under the *NIRC, as amended*, including the alleged violation in this case, shall prescribe after five years.

As for the second consideration, the foregoing provides that prescription runs from the day of the commission of the violation, and if the same be not known at the time, from the discovery thereof *and* the institution of judicial proceedings for its investigation and punishment. Based on this, it appears that prescription of a violation of the provisions in the *NIRC, as amended*, would only start to run from the day of the violation's commission or discovery *and* the *institution of judicial proceedings* for its investigation and punishment. Apparently, this leads to an absurd situation where the violation allegedly committed becomes imprescriptible since prescription would not begin to run until the information has been filed with the court.

This situation was finally settled in the case of *People vs. Consebido*,[44] ("*Consebido*"), where the High Court clarified that under *Section 281 of the 1997 NIRC,* prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery and that the filing of the complaint is not the reckoning point for the discovery, thus:

> There are two components in determining when the prescriptive period shall begin to run under Section 281: first, the discovery of the commission of the violation; and second, the institution of judicial proceedings for its investigation and punishment. As observed in *Lim, Sr.*, this makes the prosecution of offenses under the 1997 NIRC practically imprescriptible as the prescriptive period will only begin to run upon the institution of judicial proceedings. But the next paragraph of Section 281 states that "prescription shall be interrupted when proceedings are instituted against the guilty persons[.]" If *Lim, Sr.* is to be followed, prescription

[44] G.R. No. 258563, April 2, 2025.

would both be started and interrupted by the institution of proceedings against the accused.

This is not the first time that the Court encountered this conundrum.

Petitioner duly pointed out that Section 2 of Act No. 3326 is similarly worded to the second and third paragraphs of Section 281 of the 1997 NIRC. Section 2 provides:

> SECTION 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

When Act No. 3326 was passed on December 4, 1926, it was the justice of the peace that conducted the preliminary investigation of criminal offenses. Accordingly, the filing of the complaint with the justice of the peace also signified the institution of criminal proceedings against the accused. The prevailing rule then was that the filing of the complaint with the justice of the peace tolled the prescription of the offense. The Court thus clarified in *Panaguiton, Jr. v. Department of Justice* that the term "proceedings" in Section 2 of Act No. 3326 should now be understood to include those before the executive branch of government. Hence, preliminary investigation tolls prescription, the reason being that "to rule otherwise would deprive the injured party the right to obtain vindication on account of delays that are not under his control."

In *People v. Duque*, the Court held *that the phrase "'institution of judicial proceedings for its investigation and punishment' may be either disregarded as surplusage or should be deemed preceded by the word 'until.'"* A literal reading of Section 2 of Act No. 3326 would be unfavorable to the accused and is unnecessary. The Court opined that "the prescription period would both begin and be interrupted by the same occurrences the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period." The Court affirmed this interpretation in *Presidential Commission on Good Government v. The Ombudsman* and added that this interpretation is consistent with the second paragraph of Section 2 of Act No. 3326.

Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in Panaguiton. Thus, *in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery.* The adoption of the interpretation in Duque is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. *The institution of proceedings, specifically the commencement of*

> *preliminary investigation, shall interrupt the prescriptive period for the offense*. This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.
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> The Court stresses that the date of discovery of the commission of the violation is not necessarily synonymous to the date of the filing of the complaint. Discovery is "the act, process, or an instance of gaining knowledge of or ascertaining the existence of something previously unknown or unrecognized." Simply put, *the date of discovery is when it becomes known that a violation of the 1997 NIRC was committed. The filing of the complaint is not the reckoning point for the discovery* unless it so happens that the complaint was filed on the very same day that the violation was discovered.
> (Citations omitted. Italics, Ours.)

In this case, the violation allegedly committed by the accused was discovered when RDC failed to pay the deficiency income tax despite due notice and demand, on January 20, 2017, when the FAN was due for payment based on the attached Assessment Notices,[45] with the last attempt at collection when the FNBS was issued on July 28, 2017.[46]

The FNBS provided a 10-day period from receipt thereof to settle the deficiency taxes. However, there is no showing therein that it was received by accused RDC. Instead, complainant BIR relied on the date of mailing of FNBS, alleging that it was made through registered mail, on July 28, 2017, which appears to be a computer print-out of a list of PhlPost tracking numbers with recipient names and address.[47] Based on this, accused RDC had until 10 days, or until August 7, 2017, to settle the deficiency taxes assessed in the FAN. However, there was allegedly no payment made by the accused.

Thus, for purposes of reckoning the prescriptive period of the offense in this case, the Court shall rely on the supposed final due date given to accused RDC to settle its deficiency taxes on August 7, 2017 based on the FNBS, as alleged by complainant BIR, as it is date when it was discovered that the accused allegedly failed to pay the taxes in violation of *Section 255 of the NIRC, as amended*. Five years therefrom, plaintiff had until August 7, 2022 to initiate criminal proceedings against the accused.

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[45] Exhibit "P-6" to "P-7", *id.* at 367 to 372.
[46] Exhibit "P-9", *id.* at 376.
[47] Exhibit "P-9-2", *id.* at 375.

Lastly, as with the third consideration, Our immediate reference is *Section 2, Rule 9 of the Revised Rules of Court of Tax Appeals ("RRCTA")*, which provides that the prescriptive period of criminal offenses shall be interrupted upon the filing of the *Information* before the Court of Tax Appeals, which is the judicial proceedings contemplated under *Section 281 of the NIRC, as amended,* Thus:

> SEC. 2. *Institution of Criminal Actions.* - All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
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> *The institution of the criminal action shall interrupt the running of the period of prescription.*
> (Italics, Ours.)

However, in light of the *Consebido* case, the High Court revisited the interpretation of *Section 281 of the NIRC, as amended*, ruling that it shall be the filing of the criminal complaint before the Department of Justice ("DOJ") which shall toll the running of the prescriptive period for offenses under the *NIRC, as amended*, whether its commission was immediately known or unknown at the time of the violation. We reproduce below the relevant ruling for emphasis:

> When Act No. 3326 was passed on December 4, 1926, it was the justice of the peace that conducted the preliminary investigation of criminal offenses. Accordingly, the filing of the complaint with the justice of the peace also signified the institution of criminal proceedings against the accused. The prevailing rule then was that the filing of the complaint with the justice of the peace tolled the prescription of the offense. The Court thus clarified in *Panaguiton, Jr. v. Department of Justice* that *the term "proceedings" in Section 2 of Act No. 3326 should now be understood to include those before the executive branch of government. Hence, preliminary investigation tolls prescription*, the reason being that "to rule otherwise would deprive the injured party the right to obtain vindication on account of delays that are not under his control."
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> Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in *Panaguiton*. Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from

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> its discovery. The adoption of the interpretation in Duque is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. *The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense*. This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.
> (Italics, Ours. Citations omitted.)

As early as in *Panaguiton, Jr. vs. Department of Justice*,[48] citing *Securities and Exchange Commission vs. Interport Resources Corporation, et. al.*,[49] it has already been established that any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription, hence:

> While it may be observed that the term "judicial proceedings" in Sec. 2 of Act No. 3326 appears before "investigation and punishment" in the old law, with the subsequent change in set-up whereby the investigation of the charge for purposes of prosecution has become the exclusive function of the executive branch, the term "proceedings" should now be understood either executive or judicial in character: executive when it involves the investigation phase and judicial when it refers to the trial and judgment stage. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription.

Taking cue from the foregoing, the High Court applied in *Consebido* such interpretation with respect to prescription of offenses under the *NIRC, as amended*, particularly on *Section 281*, which consequently extends to *Section 2, Rule 9 of RRCTA*. Verily, the prescriptive period of criminal offenses under the *NIRC, as amended*, is now effectively interrupted upon the filing of complaint-affidavit with the DOJ, triggering the preliminary investigation on the alleged offense committed.

Guided by the pronouncement in *Consebido*, the running of prescription on the alleged violation by the accused RDC of *Section 255 of the NIRC, as amended*, has been effectively interrupted by the filing of the Joint Complaint-Affidavit of ROs Angelica P. Agcaoili, Mohammad Ali M. Rodi and Janette F. Torres, together with the recommendation from the CIR, on June 27, 2019 before the DOJ.[50] Accordingly, the violation of *Section 255*

[48] G.R. No. 167571, November 25, 2008.
[49] G.R. No. 135808, October 6, 2008.
[50] Exhibit "P-11" and "P-12", Docket – Vol. I, pp. 379 to 385.

of the NIRC, as amended, herein were thus instituted within the five-year prescriptive period under *Section 281 of the same Code*.

Nevertheless, the prosecution failed to prove that accused violated Section 255 of the Tax Code.

To recall, accused is being charged with violation under *Section 255*, in relation to *Sections 253(d) and 256, of the NIRC, as amended*, which provides:

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation*. - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who *willfully fails to pay such tax*, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
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> SEC. 253. *General Provisions*. – . . .
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> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, *president,* general manager, branch manager, *treasurer*, officer-in-charge, and the employees *responsible for the violation*.
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> . . . .
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> SEC. 256. *Penal Liability of Corporations*. - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the *responsible corporate officers*, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).
> (Italics, Ours.)

To successfully prosecute a violation of *Section 255*, it must be shown that: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) the act is willful.[51]

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[51] *People v. Mendez*, G.R. Nos. 208310-11 & 208662, 28 March 2023.

1.) <u>Accused RDC is required to pay the deficiency tax assessment</u>

In this case, accused RDC is allegedly required to pay deficiency income tax as stated in the FAN.

Section 228 of the NIRC, as amended, states that when the Commissioner or his duly authorized representative finds that proper taxes should be assessed, *he shall first notify the taxpayer of his findings*.

A crucial aspect of a tax assessment is that the taxpayer is given due notice of the BIR's findings as it is by giving due notice that a taxpayer is made aware that it is being assessed and required to pay the proper taxes as determined by the BIR.

Revenue Regulations ("RR") No. 18-13, amending RR No. 12-99, provides the guidelines as to how a taxpayer is notified of the assessment, thus:

> 3.1.6 *Modes of Service.*— The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
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> (i) *The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found.* A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
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> *In case personal service is not practicable, the notice shall be served by substituted service or by mail.*
>
> (ii) *Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:*
>
> *The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.*
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
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> If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that

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they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer.

Based on the foregoing, assessment notices must be served to the party (or the taxpayer being assessed) primarily through personal delivery to its registered address or known address or wherever it may be found. It is only when personal service is rendered impracticable that resort to substituted service or service by mail may be done.

Section 3.1.6 of RR No. 18-13 provided guidelines for three instances of substituted service: 1) when the taxpayer is not present in the registered address, 2) when the taxpayer is not present in its known address, which is its place of business, 3) when the taxpayer is not present in its known address, which is its place of residence, or 4) when no person is found in the registered or known address.

Where the party to the assessment is a juridical entity, substituted service may be resorted to by leaving the assessment notice at its registered address, with its clerk, or with a person having charge thereof.

In this case, accused RDC, as a juridical entity, was served with the PAN and FAN to its registered address at Shop 1 G/F Net Square Bldg., 28th Street cor. 3rd Avenue, Crescent Park West, Bonifacio Global City, Taguig City. It is also the place where accused RDC conducts its business or where its store is located. At the time the PAN and FAN were served on November 29, 2016 and December 22, 2016, respectively, it was Jallorina, a store clerk, who received and signed for both. Particularly in the PAN, he indicated his designation as STAFF.

Further, the receipt of the PAN and FAN by Jallorina, RDC's store clerk, was admitted by accused Ramil himself:

> JUSTICE SAN PEDRO:
> I have some clarificatory questions.
>
> Q: Mr. Dela Cruz, who is Melchor?
>
> A: Yes, your Honors:
>
> Q: Who is he?
>
> A: He is a store clerk, your Honors.
>
> Q: Store Clerk in your minimart?
>
> A: Yes, your Honors.
>
> Q: Because in the documents presented by the [prosecution], he appears to have received the Formal Assessment Notice, the PAN, what can you say about this? And there is the name and signature in those documents?
>
> A: Yes, when I ask him about it, he misplaced it so I did not receive the letter.
>
> Q: But he did admit receiving this?
>
> A: Yes, your Honors.[52]

Despite accused Ramil's admission that Jallorina received the PAN and FAN, the crux of accused's defense is that Jallorina was not authorized to receive said notices in behalf of RDC.

[52] TSN of the hearing held on October 19, 2023, pp. 12 to 13.

However, the amendments introduced by *RR No. 18-13* to the modes of service of the assessment notices apparently eliminated the requirement that the same must be received by the taxpayer's duly authorized representative in effecting substituted or constructive service. Now, substituted service may be effected by leaving the assessment notices with the clerk or with a person having charge at the taxpayer's registered or known address (which is also its place of business).

In this case, since the registered address of accused RDC is also its place of business, its store clerk, like Jallorina, is considered as a person having charge thereof. The unfortunate fact that Jallorina misplaced the PAN and FAN and his failure to transmit the same to accused Ramil does not invalidate the validity of the service and proof of receipt made by complainant BIR in accordance with the guidelines under *Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-13.*

Accused then laments that the assessment notices have no factual and legal basis in violation of *Section 228 of the Tax Code*, which states that the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

However, a perusal of the PAN and FAN belies such claim as both notices sufficiently laid down the factual and legal bases of the assessments.

Given that the PAN and FAN were validly served to accused RDC, and was duly received by a clerk or person having charge of its registered address, accused was indeed required to pay the deficiency tax assessment indicated in the FAN.

2.) <u>Accused RDC failed to pay the deficiency tax assessment</u>

The fact that the FAN was not paid is not disputed by the accused considering that its main defense is that it is not required to pay any deficiency tax assessment as it did not receive the assessment notices.

Further, accused RDC admits to filing a Protest Letter dated January 20, 2017 against the FAN,[53] albeit belatedly made on February 8, 2017,[54] which indicates that it did not intend to pay the deficiency tax assessments and, instead, dispute the same.

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[53] Exhibit "A-11", Docket – Vol. II, pp. 779 to 784.

[54] The 30-day period to file protest against the FAN, in accordance with *Section 228 of the Tax Code* and *Section 3.1.4 of RR No. 18-13*, started on December 22, 2016 and ended on January 23, 2018 (January 21, 2018 fell on a Saturday).

Lastly, accused Ramil, as the President of accused RDC, attempted to settle the deficiency tax assessments in the FAN when it offered a compromise settlement thereon with complainant BIR in a Letter dated March 23, 2022, and filed on March 24, 2022.[55] This further confirms that there was no prior payment made on the FAN.

3.) *Accused RDC's failure to pay the deficiency tax assessment is not willful.*

A crucial element which makes the allegation of failure to pay tax a violation under *Section 255 of the Tax Code* is that it must be done willfully.

In *People vs. Mendez*,[56] it was discussed that the term willful as defined in the Ninth Edition of Black's Law Dictionary means voluntary and intentional, but not necessarily malicious. The term willfully was also construed as a voluntary, intentional violation of a known legal duty. Hence, the Supreme Court held that the prosecution must prove that the taxpayer knew its legal duty to file an ITR, yet knowingly, voluntarily, and intentionally neglected to do so.

Further in *Commissioner of Internal Revenue, et. al. vs. The Honorable Court of Appeals, et. al.*,[57] "wilful" means "premeditated; malicious; done with intent, or with bad motive or purpose, or w*ith indifference to the natural consequence* . . ."

It must be stressed that the willful neglect to file the required tax return cannot be presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.

In this case, the prosecution failed to prove that accused RDC willfully and intently failed to pay the deficiency tax assessments, with indifference to the natural consequences of such failure to pay.

As mentioned earlier, accused RDC attempted to protest the FAN when it filed the Protest Letter dated January 20, 2017. Despite said protest being belatedly filed with the BIR on February 8, 2017, instead of filing it until January 23, 2018 (or the following business day after the end of the 30-day period to protest the assessment on January 21, 2018, considering that the FAN was received on December 22, 2017), it only shows that accused RDC did not intend to disregard FAN.

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[55] Exhibit "A-19", *id.* at 838 to 840.
[56] Supra.
[57] G.R. No. 119322, June 4, 1996.

A reading of said Protest Letter shows that accused Ramil acknowledged receipt of the FAN but on a different date, or on January 5, 2018. Even assuming this was true, the Protest Letter was still belatedly filed as the 30-day period to protest the FAN supposedly ended on February 6, 2018.[58]

Nevertheless, such act of protesting the FAN shows that accused RDC intended to dispute the same. Given that it was intended to be disputed, We find that accused is, in good faith, justified to not yet pay the deficiency tax assessments and await the decision on its disputed assessments.

Neither can the protest be considered a mere afterthought filed to defang charges of intentionality and willfulness, considering the dispute regarding the date of accused's receipt of the FAN. We thus consider it as having been filed in good faith.

While, indeed, a protest belatedly filed renders a FAN final, executory, and demandable pursuant to *Section 3.1.4 of RR No. 18-13*,[59] the prosecution nevertheless failed to prove that subsequent demand for payments were properly served to accused RDC.

The prosecution alleged that the PCL and FNBS were both mailed to accused RDC by registered mail. However, the proof thereof submitted by the prosecution is insufficient. Computer-print outs of a list of PhlPost tracking numbers with recipient names and address[60] are merely self-serving. The prosecution did not present the Registry Receipt and Registry Return Card to verify if the PCL and FNBS were indeed sent through registered mail and that the same were received by the intended recipients.

Hence, it cannot be said that the accused stubbornly disregarded the repeated subsequent demands for payment by complainant BIR.

Further, upon obtaining knowledge of the service of WDL on December 12, 2017, accused RDC attempted to re-open its communications with complainant BIR by requesting a copy of the FAN and its proof of service

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[58] February 4, 2018 fell on a Saturday.

[59] 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. . . .

. . . .

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

[60] Exhibit "P-8-2" and "P-9-2", Docket – Vol. I, pp. 373 and 375.

in a Letter dated December 21, 2017.[61] This was replied to by BIR on a Letter dated December 29, 2017.[62]

This was then followed by a Request Letter for Reinvestigation filed by accused RDC on January 20, 2018,[63] to which the BIR replied in a Letter dated February 7, 2018.[64]

In compliance to the Letter dated February 7, 2018, accused RDC filed a Compliance with Manifestation dated March 15, 2018,[65] attaching therewith a copy of the Protest Letter.

The foregoing acts of accused RDC only shows that it did not intentionally and maliciously disregard any obligation to pay the deficiency tax assessments imposed upon it. The Court sees these acts as ways executed in good faith by a taxpayer trying to settle the disputable facts in the circumstances attending the service and protest of the deficiency tax assessments.

On the other hand, the prosecution mainly anchors its allegation that there was willful failure to pay tax in this case on the basis of mere literal absence of payment from the time the FAN was served to accused RDC and that the same already became final, executory, and demandable, without submitting positive evidence of malicious intent on the part of the accused RDC in not paying the FAN.

The *onus probandi* in establishing the guilt of an accused for a criminal offense lies with the prosecution. The burden must be discharged by it on the strength of its own evidence and not on the weakness of the evidence for the defense or lack of it. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who are to act in judgment, is indispensable to overcome the constitutional presumption of innocence.[66] Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.[67]

Verily, due to the foregoing circumstances, the Court finds that there is reasonable doubt on the alleged willfulness of accused RDC, and its responsible officers, accused Rami and Lolita, in its failure to pay the deficiency tax assessments. We instead find its efforts to correspond with the

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61 Exhibit "A-6", Docket – Vol. II, p. 767.
62 Exhibit "A-7", *id.* at 768.
63 Exhibit "A-9", *id.* at 770 to 776.
64 Exhibit "A-4", *id.* at 763.
65 Exhibit "A-10", *id.* at 777 to 778.
66 *People vs. Villanueva*, G.R. No. 131773, 13 February 2002.
67 *Macayan, Jr. vs. People*, G.R. No. 175842, 18 March 2015.

BIR after the WDL was served to it as acts contrary to willfulness, intentional or just sheer indifference on the natural consequences of non-payment.

In sum, the prosecution failed to sufficiently establish accused RDC's, and its responsible officers accused Ramil's and Lolita's, guilt beyond reasonable doubt on the alleged violation of *Section 255 of the NIRC, as amended.*

However, accused RDC is still civilly liable to pay the deficiency income tax.

A person acquitted of a criminal charge, however, is not necessarily civilly free because the quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence). In order to be completely free from civil liability, a person's acquittal must be based on the fact that he did not commit the offense. If the acquittal is based merely on reasonable doubt, the accused may still be held civilly liable since this does not mean he did not commit the act complained of. It may only be that the facts proved did not constitute the offense charged.[68]

In this case, the accused's acquittal is based merely on reasonable doubt, that is prosecution failed to prove the last element to of the offense charged (i.e. willful failure to pay tax). Nevertheless, the act of failure to pay the FAN was clearly established and even undisputed.

Given so, accused RDC still remains civilly liable to pay the assessed deficiency taxes.

The FAN assessed accused RDC with deficiency income tax, VAT, EWT. However, since the *Information* indicted accused RDC for failure to pay only the deficiency income tax, this Court shall adjudicate the accused's civil liability only to such extent.

As can be recalled, due to accused RDC's failure to timely file a protest against the FAN, the same is already rendered final, executory, and demandable. As such, the basic deficiency income tax assessed therein amounting to ₱1,794,605.28 must be paid by accused RDC, with surcharge and interest accruing from the time it was due for payment on January 20, 2017, as stated in the attached Assessment Notice.

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[68] *Nuguid v. Nicdao*, G.R. No. 150785, September 15, 2006.

ACCORDINGLY, accused **RDC Minimart Inc.**, **Ramil C. Dela Cruz**, and **Lolita I. Dela Cruz** are **ACQUITTED** of the crime charged on the ground of reasonable doubt. However, accused **RDC Minimart Inc.** is **ORDERED TO PAY** the amount of **₱1,794,605.28**, representing deficiency income tax for the taxable year 2013, plus interest and surcharges computed in accordance with S*ections 248(A) and 249(A) and (B) of the NIRC, as amended.*

Further, the cash bail bond posted by accused **Ramil C. Dela Cruz**, and **Lolita I. Dela Cruz** for their respective provisional liberty in the amount of ₱60,000.00 each are hereby **DISCHARGED** and ordered to be **RELEASED** to them upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

With due respect, please see Separate Opinion
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

With due respect, please see Separate Opinion
CORAZON G. FERRER-FLORES
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. NO. O-890

Present:

Ringpis-Liban, *P.J.*, *Chairperson*,
Modesto-San Pedro, and
Ferrer-Flores, *JJ.*

- versus -

RDC MINIMART INC., RAMIL C. DELA CRUZ and **LOLITA I. DELA CRUZ,**
(Shop 1 G/F Net Square Bldg., 2 Fort Bonifacio, Taguig City and/or 151 Batangas West, Ayala Alabang Village, Muntinlupa City),
Accused.

Promulgated:

9:05 AM

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SEPARATE OPINION

RINGPIS-LIBAN, *P.J.:*

I concur in the result.

I agree that the holding in *People of Philippines v. Ulysses Palconit Consebido,*[1] which was promulgated on April 2, 2025 prior to this decision, is already applicable to this case. Nevertheless, I maintain the view that *Consebido* should be applied *prospectively*. This intention is clear from a textual reading of the Supreme Court *En Banc* case:

[1] G.R. Nos. 258563, April 2, 2025 (*Consebido*).

"With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. The Court reiterates its reasoning in *People v. Olarte* that *'it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint.'*

In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:

> [T]he use of the phrase 'complaint or information' in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office.

<u>But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes</u>, <u>this new rule shall apply prospectively</u>.

<u>Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period</u>. The ruling in *Desierto* and the subsequent case of *Corpus, Jr. v. People of the Philippines*, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned." (*Underscoring supplied; citations omitted*)

Because *Consebido* itself called for the *prospective* application of its pronouncement on prescription, I differ from the view which called for its *retroactive application to all cases governed by Section 281 of the National Internal Revenue Code of 1997 (1997 NIRC), dating back to its effectivity and even "displacing contrary applications premised on" Lim v. Court of Appeals.*[2]

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

[2] G.R. Nos. L-48134-37, October 18, 1990.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RDC MINIMART INC., RAMIL C. DELA CRUZ and LOLITA I. DELA CRUZ,
(Shop 1 G/F Net Square Bldg., 2 Fort Bonifacio, Taguig City and/or 151 Batangas West, Ayala Alabang Village, Muntinlupa City),
Accused.

CTA CRIM. CASE NO. O-890
For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *P.J.*,
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

9:05 Am

x- -x

SEPARATE OPINION

FERRER-FLORES, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Maria Rowena Modesto-San Pedro, that the government's right to prosecute was made within the prescriptive period. I write separately, however, to clarify my position on the non-applicability of *People of the Philippines vs. Ulysses Palconit Consebido*[1] to the present case.

With due respect, I maintain that *Consebido* finds no application here. The Supreme Court itself has expressly ruled that its Ruling shall apply prospectively.

In *Consebido*, the Supreme Court was confronted with the dilemma on whether the filing of the criminal complaint before the DOJ, will toll the

[1] G.R. No. 258563, April 02, 2025.

running of the prescriptive period. Resolving this, the Supreme Court declared:

> With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. The Court reiterates its reasoning in *People v. Olarte* that *"it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint.*"
>
> In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:
>
>> [T]he use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office.
>
> **But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.**
>
> Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in Desierto and the subsequent case of Corpus, Jr. v. People of the Philippines, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned. (*citations omitted; emphasis supplied*)

Considering that *Consebido* was promulgated only on April 2, 2025, it is therefore inapplicable to the present case. In my respectful view, the Court should instead be guided by the Supreme Court's pronouncement in *Emilio E. Lim, Sr., et. al. vs. Court of Appeals*,[2] as well as Section 2, Rule 9 of the Revised Rules of Court of Tax Appeals, which provides that the five-year prescriptive period for criminal offenses is interrupted upon the filing of the *Information* before this Court.

[2] G.R. Nos. L-48134-37, October 18, 1990.

Applying *Lim* and the foregoing rule to the case at bar, the reckoning date of the five-year prescriptive period shall be January 22, 2017, which is the date when the Formal Assessment Notice became final, executory and demandable. Plaintiff, thus, had until January 22, 2022, to initiate criminal proceedings against the accused. The running of the prescriptive period for the alleged violation by accused RDC of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, was effectively interrupted by the filing of the *Information* before this Court on June 30, 2021. Accordingly, the government's right to prosecute was made well within the prescriptive period.

Nevertheless, I agree with the *ponencia* that the prosecution failed to prove beyond reasonable doubt that accused violated Section 255 of the NIRC of 1997, as amended. While it was able to prove the first and second elements of Section 255, i.e. (1) accused is required to pay the deficiency tax assessment and that (2) accused failed to pay the deficiency tax assessment, the prosecution failed to prove the third element, which is accused's willful failure to pay.

ALL TOLD, I vote to **ACQUIT** accused RDC Minimart Inc., Ramil C. Dela Cruz and Lolita I. Dela Cruz.

CORAZON G. FERRER-FLORES
Associate Justice